Supreme Court, U. S.
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No. 79-939

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

DELAWARE STATE COLLEGE, *et al.*,
Petitioners
[Additional Petitioners listed inside cover]

v.

COLUMBUS B. RICKS, *Respondent*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT IN OPPOSITION

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*The other Petitioners are as follows:
WALTON H. SIMPSON,
WILLIAM H. DAVIS,
WILLIAM G. DIX,
EDWARD W. HAGEMEYER,
JAMES C. HARDCASTLE,
DELMA LAFFERTY,
JAMES H. WILLIAMS,
WILLIAM S. YOUNG,
BURT C. PRATT,
LUNA I. MISHOE,
PIERRE S. DUPONT, IV,
M. MILFORD CALDWELL,
GEORGE W. MCLAUGHLIN,
ROMEO C. HENDERSON,
HARRIET R. WILLIAMS,
ARTHUR E. BRAGG,
ORA BUNCH,
EHSAN HELMY,
VERA POWELL,
JOHN R. PRICE,
HERBERT THOMPSON,
W. RICHARD WYNDER,
ULYSSES WASHINGTON, and
JANE LASKARIS.

M. MILFORD CALDWELL died on October 27, 1979.

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ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

SUPPLEMENTAL BRIEF FOR RESPONDENT IN OPPOSITION

The recent decision of this Court in the case of *Mohasco Corp. v. Silver*, Docket No. 79-616, October Term, 1979, decided on June 29, 1980, suggests an alternative legal analysis which is both appropriate to the facts of the instant case and supportive of respondent's argument that a timely charge was filed with the Equal

Employment Opportunity Commission (EEOC). The Court will recall the holding of *Mohasco* that no charge of discrimination can be filed where the charging party is located in a jurisdiction which has a local agency charged with the enforcement of a law prohibiting employment discrimination until 60 days after the filing of such a charge with that local agency unless the state proceedings terminate before the expiration of sixty days.[1] Any charge filed with the local agency must be

1. *Mohasco* was concerned with when a charge can be deemed filed pursuant to 42 U.S.C. §2000e-5(c). That section of the statute reads as follows:

> (c) In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person ag-

filed with the EEOC within 300 days after the occurence of the violation.

The respondent in the instant case filed a charge of discrimination with the EEOC and with the Delaware Department of Labor, the local agency which enforces the anti-discrimination employment laws in Delaware[2] (App. Pet. for Cert. 25a and 26a). The charge was filed with the Delaware agency on April 11, 1975. The charge with the EEOC was filed at the earliest on April 28, 1975.[3] Assuming a filing with the EEOC on April 28, 1975, July 2, 1974 is the date 300 days prior thereto.

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grieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

2. 19 Del. C. §712(d) provides as follows with respect to the filing of a charge of employment discrimination under Delaware law:

> (d) A charge under subsection (b) must be filed within 90 days after the alleged unlawful unemployment practice or 120 days after discovery thereof whichever is the later.

3. Although the Appendix before this Court indicates that the charge of the respondent was filed with the EEOC on April 4, 1975, it is clear under *Mohasco* that since a charge had to be filed with the state agency first and the charge was filed on April 11, 1975 with the state, the earlier submission of the charge to EEOC on April 4, cannot be deemed a filing with that agency. However, Exhibit "C" attached to the Memorandum in Support of the Plaintiff's Opposition to Defendant's Motion for Dismissal and Summary Judgment filed in the District Court, reveals that the local agency, the Delaware Department of Labor, waived jurisdiction over this matter by a letter dated April 28, 1975. The earliest date then that the charge can be deemed filed with the EEOC would have been April 28, 1975. The July 2, 1974 date is the date which the respondent calculates to be 300 days prior to the April 28, 1975 date. Respondent urges this Court to treat the period from April 4, 1975 to April 28, 1975 as a period during which, in accordance with *Love v. Pullman Co.*, 404 U.S. 552 (1972), the charge was held in "suspended animation" and as automatically filed when the state agency terminated proceedings by waiver on April 28, 1975.

Within that period of time it is alleged that violations of 42 U.S.C. §2000e-5 (Title VII) occurred. A specific event alleged to have occured within that 300 day period and which has already been identified in the Statement of the Case of the Respondent's Brief in Opposition to Certiorari is the issuance of a letter of September 12, 1974 by the Board of Trustees to respondent informing him that he would not be granted tenure (A.21). In addition other events appearing in the record but not identified in the Appendix before this Court are the signing by the college president on August 16, 1974 of the terminal contract to which the letter of June 26, 1974 (A.21) to Dr. Ricks refers. The contract was signed by respondent on September 3, 1974. (Exhibit "B" of Moving Defendant's Opening Brief in Support of Summary Judgment in the District Court). As those events occurred within 300 days of the filing of the charge with the EEOC, after the filing of the charge with the local agency, it should be apparent that the charge with the EEOC is timely and forms an appropriate basis for the Title VII claim of the respondent's lawsuit.

Respondent has previously argued in his Brief in Opposition that the conduct engaged in by the petitioner was a continuing violation of Title VII. However, even assuming for the sake of argument that the course of conduct outlined in respondent's Statement of the Case in his Brief in Opposition filed in this Court is not, as respondent alleges, a continuing violation but is viewed rather as individual and isolated acts standing alone, each of the two acts identified above, i.e., the execution of the contract on August 16, 1974 on behalf of the college and its being giving force by the execution on September 3, 1974 by Dr. Ricks and the letter of September 12, 1974 from the Board of Trustees to the respondent denying him tenure, occurred within 300 days of the filing of the charge with the EEOC and are timely.

In conclusion, respondent urges that the Court hold that since the charge was in fact filed with the EEOC within 300 days of an act alleged to be in violation of Title VII, and had been filed previously with the state agency, that the charge was in fact timely filed with the Equal Employment Opportunity Commission and does in fact form a proper basis for the court complaint in this matter. Such a finding compels an affirmance of the judgment of the court of appeals which reversed the dismissal of the district court.

Respectfully submitted,

/s/ JUDITH E. HARRIS

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